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HOUSE BILL 1831

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4; Title 41, Chapter 21, Part 2; Title 53 and Title 63, relative to controlled and addictive substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 53-10-303(f), is amended by deleting the subsection in its entirety and substituting the following:

(f) Pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner shall have the authority to promulgate rules as necessary for implementation of this part regarding:

(1) Establishing, maintaining, and operating the database;

(2) Access to the database and how access is obtained;

(3) Control and dissemination of data and information in the database;

(4) The control, sharing, and dissemination of data and information in the database with other states or other entities acting on behalf of a state; and

(5) Establishing the morphine milligram equivalent calculation for an opioid drug contained in Schedules II-V for purposes of SECTION 4 of this act; provided, that if no such rule is promulgated for an opioid drug, the morphine milligram equivalent calculation established by the federal centers for disease control and prevention for that drug shall be used.

SECTION 2. Tennessee Code Annotated, Section 53-10-310, is amended by deleting subdivisions (e)(1) and (e)(2) in their entireties and substituting the following:

(e)

(1) When prescribing a controlled substance, all healthcare practitioners, unless otherwise exempted under this part, shall check the controlled substance database prior to prescribing one (1) of the controlled substances identified in subdivision (e)(4) to a human patient at the beginning of a new episode of treatment and shall check the controlled substance database for that human patient at least every six (6) months when that prescribed controlled substance remains part of the treatment. Healthcare practitioners shall also check the controlled substance database prior to prescribing to an opioid naïve patient or an acute care patient, as defined in Section 4 of this act, both before the initial prescription and before a third prescription. An authorized healthcare practitioner's delegate may check the controlled substance database on behalf of the healthcare practitioner. A healthcare practitioner has the professional responsibility to use heightened attention when prescribing to a patient who has recently been prescribed to by other healthcare practitioners. A new episode of treatment means a prescription for a controlled substance that has not been prescribed by that healthcare practitioner within the previous six (6) months.

(2) When dispensing a controlled substance, all healthcare practitioners, unless otherwise exempted under this part, shall check the controlled substance database prior to dispensing one (1) of the controlled substances identified in subdivision (e)(4) to a human patient the first time that patient is dispensed a controlled substance at that practice site. The dispenser shall check the controlled substance database again at least once every six (6) months for that human patient after the initial dispensing for the duration of time the controlled substance is dispensed to that patient. The initial dispensing check fulfills the check requirement for the first six-month period. Healthcare practitioners shall also check the controlled substance database prior to dispensing pursuant to any prescription with written instructions indicating the earliest date on which the

prescription can be filled. An authorized healthcare practitioner's delegate may check the controlled substance database on behalf of the healthcare practitioner.

SECTION 3. Tennessee Code Annotated, Section 53-10-310, is amended by deleting subdivisions (e)(6)(B) and (e)(6)(C) in their entireties.

SECTION 4. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) As used in this section:

(1) "Acute care patient" means a patient who has been treated with an opioid for fewer than ninety (90) days during the twelve-month period prior to the date of treatment by a healthcare practitioner and who is not an opioid naïve patient;

(2) "Healthcare practitioner" means a person licensed under this title who has the authority to prescribe or dispense controlled substances in the course of professional practice;

(3)

(A) "Informed consent" means consent voluntarily given in writing by the patient or the patient's legal representative after sufficient explanation and disclosure by the healthcare practitioner of the subject matter involved to enable the person whose consent is sought to make a knowing and willful decision. This explanation and disclosure by the healthcare practitioner to the patient or the patient's legal representative before consent may be obtained shall include, at a minimum:

(i) Adequate information to allow the patient or the patient's legal representative to understand:

(*a*) The risks, effects, and characteristics of opioids, including the risks of physical dependency and addiction, misuse, and diversion;

(*b*) What to expect when taking an opioid and how opioids should be used; and

(*c*) Reasonable alternatives to opioids for treating or managing the patient's condition or symptoms and the benefits and risks of the alternative treatments;

(ii) A reasonable opportunity for questions by the patient or patient's legal representative; and

(iii) Discussion and consideration by the patient or the patient's legal representative and the healthcare practitioner of whether the patient should take an opioid medication;

(B) Nothing in subdivision (a)(3)(A) limits other requirements imposed on healthcare practitioners by law or applicable licensing authority; and

(4) "Opioid naïve patient" means a patient who has not been treated with an opioid in the thirty-day period prior to the date of treatment by a healthcare practitioner.

(b) A healthcare practitioner shall not treat an opioid naïve patient with more than a five-day supply of an opioid.

(c)

(1) In exceptional cases where a healthcare practitioner determines that an additional supply of the opioid may be warranted and that circumstances would make it difficult for the patient to acquire a second prescription, the

practitioner may also issue an opioid naïve patient a second opioid prescription simultaneous to the issuance of an initial prescription with written instructions on the prescription stating that the earliest date on which a prescription may be filled is five (5) days from issuance and the latest date is ten (10) days from issuance. The restrictions in subsections (b) and (e) apply to any second prescription issued pursuant to this subdivision (c)(1).

(2) The healthcare practitioner shall document in the medical record the reason for issuing the second opioid prescription pursuant to subdivision (c)(1) and shall counsel the patient or the patient's legal representative regarding the circumstances under which the second prescription should and should not be filled.

(d)

(1) A healthcare practitioner shall not treat an acute care patient with an opioid without first personally assessing the patient and obtaining informed consent. If the patient is a woman of childbearing age, the information provided as part of the informed consent process must include information regarding Neonatal Abstinence Syndrome and specific information regarding how to access contraceptive services in the community. Informed consent is not required if informed consent has been previously obtained from the patient or the patient's legal representative and documented by the healthcare practitioner within the six-month period prior to the date of treatment by the healthcare practitioner.

(2) An acute care patient shall not be treated with opioids until after trial and failure of reasonable, appropriate, and available non-opioid treatments for the pain condition or documenting the contraindication or intolerance of non-opioid treatments.

(3) A healthcare practitioner shall not treat an acute care patient with more than a thirty-day supply of an opioid.

(e) The dosage of an opioid prescribed to an opioid naïve patient or acute care patient shall not exceed a daily morphine milligram equivalent dose of forty (40 MME).

(f) An opioid prescription for an opioid naïve patient or acute care patient shall not allow for refill.

(g) The restrictions of this section do not apply to:

(1) The treatment of patients with malignant pain who are undergoing active or palliative cancer treatment or who are receiving hospice care;

(2) The administration of opioids directly to a patient during the patient's treatment at any facility listed in § 68-11-201;

(3) Prescriptions issued by healthcare practitioners who are pain management specialists, as that term is defined in § 63-1-301; provided, that the patient receiving the prescription is personally assessed by the pain management specialist;

(4) The direct administration of, or dispensing of, methadone for the treatment of a opioid use disorder to a patient who is receiving treatment from a healthcare practitioner practicing under 21 U.S.C. § 823(g)(1);

(5) The treatment of a patient for opioid use disorder with products that are approved by the U.S. food and drug administration for opioid use disorder by a healthcare practitioner under 21 U.S.C. § 823(g)(2); or

(6) The treatment of a patient with a product that is an opioid antagonist and does not contain an opioid agonist.

(h) The commissioner of health, in consultation with the regulatory boards created pursuant to this title that license healthcare practitioners, shall study and analyze

the impact and effects of the restrictions and limitations set forth in this section. No later than November 1, 2021, the commissioner shall issue a report relative to the impact and effects of such restrictions and limitations to the governor, the health and welfare committee of the senate, and the health committee of the house of representatives. The report may include recommendations for revisions to the restrictions on the prescription of opioids.

SECTION 5. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect January 1, 2019, the public welfare requiring it.